

OCT 25 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MUHAMMED TAWHIDUR RAHMAN;
et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72056

Agency Nos. A72-517-569
A70-958-121
A70-958-122

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 11, 2005^{**}

Before: HALL, T.G. NELSON, and TALLMAN, Circuit Judges.

Muhammed Tawhidur Rahman, Fatima Anis, and Sajeda Anis, natives and
citizens of Bangladesh, petition for review of the Board of Immigration Appeals'

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

(“BIA”) denial of their motion to reopen deportation proceedings. We review for abuse of discretion, *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005), and we grant the petition for review and remand for further proceedings.

The BIA erred in denying the Petitioners’ motion to reopen as untimely because a motion to reopen based on changed circumstances is exempt from time and numerical limitations. *See Malty v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004) (citing 8 C.F.R. § 1003.2(c)(3)(ii)).

The BIA also abused its discretion in denying the Petitioners’ motion to reopen for failing to establish eligibility for relief because, according to the affidavits provided with the motion, a high-ranking member of the Bangladeshi National Party seized their family property and threatened to kill the Petitioners because of their imputed political opinion and family membership. The evidence in the Petitioners’ motion to reopen is sufficient to establish prima facie eligibility for asylum and withholding of deportation. *See id.* at 947 (facts in support of motion to reopen must be accepted as true unless inherently unbelievable); *Hernandez–Ortiz v. INS*, 777 F.2d 509, 513 (9th Cir. 1985) (prima facie eligibility established when evidence, if true, would satisfy requirements for relief). Taking these facts as true, the Petitioners demonstrate a “reasonable likelihood” of establishing a well-founded fear of future persecution on account of a protected

ground. *See Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003) (holding that eligibility for relief does not need to be conclusively demonstrated in a motion to reopen). Accordingly, we grant the petition for review and remand to the BIA with instructions to reopen proceedings. *See Maly*, 381 F.3d at 948.

PETITION FOR REVIEW GRANTED; REMANDED.